

1 U.S. SECURITIES AND EXCHANGE COMMISSION  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 SECURITIES AND EXCHANGE  
13 COMMISSION,

14 Plaintiff,

15 v.

16 KENT H. ROBERTS,

17 Defendant.

Case No. C 07-04580 MHP

**EX PARTE MOTION FOR  
ADMINISTRATIVE RELIEF (TO CONTINUE  
HEARING SCHEDULED FOR FEBRUARY 25,  
2008)**

18  
19 The Securities and Exchange Commission, through undersigned counsel, pursuant to Civil  
20 Local Rule 7-11, respectfully moves the Court for an Order postponing the hearing scheduled for  
21 Monday, February 25, 2008, at 2:00 p.m., on Defendant's Motion to Compel Production of  
22 Documents from Third Party Howrey LLP. At a discovery hearing held on January 30, 2008, the  
23 Court ordered the parties to file briefs on the Defendant's motion on or before February 15, 2008.  
24 The SEC did not file a brief on this issue, as the motion seeks to compel documents of a third  
25 party and seeks nothing directly from the SEC. Defendant's brief, however, makes certain  
26 characterizations (not wholly accurate) regarding the SEC's actions, which seem to form the  
27 predicate, at least in part, of Defendant's motion. As a result, the SEC has an interest in being

1 present for this hearing.

2       Undersigned counsel (lead counsel and the only trial counsel authorized to represent the  
3 Commission in this matter) will be in Puerto Rico on Monday, February 25, on a pre-paid family  
4 vacation scheduled last year, planned specifically around the aggressive discovery schedule  
5 proposed by Defendant (Defendant has already taken approximately 12 depositions in six states  
6 since December, although they have been extremely professional in scheduling-related issues to  
7 date). Upon receiving and reviewing the briefs filed a few days ago, undersigned counsel  
8 contacted the Court's staff in an effort to appear telephonically. The SEC was informed today by  
9 the Court's staff that such a telephonic appearance during an in-person hearing would be  
10 impracticable because of the courtroom technology. The SEC immediately contacted the other  
11 counsel involved in this matter and, unable to obtain a stipulation, files the instant motion seeking  
12 administrative relief.  
13

14       No party is prejudiced by this request as discovery does not close in this matter until July  
15 10, 2008. Accordingly, a brief continuance would not interfere with the discovery schedule, and  
16 Defendant has proceeded to take depositions expeditiously even without first seeking to resolve  
17 this issue. Nonetheless, Bill Freeman, counsel to Defendant, informs me that he opposes the  
18 SEC's request. Robert Gooding, counsel to Howrey, who will also be attending the hearing from  
19 out of town, does not oppose the SEC's request. For the reasons stated herein, the SEC  
20 respectfully requests a brief, 1-2 week continuance of the hearing<sup>1</sup> so that undersigned counsel  
21 can attend.  
22  
23  
24

25  
26 <sup>1</sup> Since undersigned counsel has to be in San Francisco for a deposition scheduled by the  
27 Defendant on Tuesday, March 11, the SEC requests that the hearing be postponed until Monday,  
28 March 10. If the Court views that as too long to wait, however, undersigned counsel can attend  
on March 3. If the instant motion is not resolved before the hearing, undersigned counsel will be  
available by telephone if that would be helpful to the Court.

1 DATED: February 21, 2008

SECURITIES AND EXCHANGE  
COMMISSION

4 \_\_\_\_\_/s/\_\_\_\_\_  
Stephen L. Cohen

Attorney for Plaintiff Securities and Exchange  
Commission

**PROOF OF SERVICE**

I am over the age of 18 years and not a party to this action. I am a citizen of the United States and a resident of the District of Columbia. My business address is: U.S. SECURITIES AND EXCHANGE COMMISSION, 100 F Street, NE, Washington, D.C. 20549-4030. On the date set forth below, I served the attached Ex Parte Motion for Administrative Relief in the manner described below:

☒ **U.S. MAIL:** I caused the above document to be placed in a sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

☐ **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee.

☐ **FEDERAL EXPRESS:** By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier.

☒ **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated below.

on the following counsel of record:

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Executed on February 21, 2008, at Washington, D.C.

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STEPHEN L. COHEN